



New Rules for Trial Witness Statements in Business and Property Courts: What do You Need to Know

On 6 April 2021 the new rules on witness evidence (through a new Practice Direction 57AC and accompanying Appendix with a statement of best practice) have come into force in the Business and Property Courts of England and Wales.

These changes are important ones and while these apply to Business and Property Courts only (at the moment), it might be possible other judges might apply the same principles in other courts – since the principles have been described as best practice and should streamline the current daunting exercise.

The new witness statement rules apply for witness statements for trial and bring several changes to the previously unseemly procedure. The witness statements should therefore be shorter and more factual rather than providing witness' opinions or support an argument of the party summoning the witness.

The witness statements now have an enhanced statement of truth and the statements have to be endorsed with a certificate of compliance signed by the relevant legal representative – in most cases a partner or senior lawyer responsible for the case. The certificate is to ensure that the witness statements were properly prepared and are in accordance with the statement of best practice as set out in the Appendix – and therefore the witness statements should be thoroughly checked.

According to the new rules, a witness statement should be more concise and prepared in the witness' own language, with documents only shown to refresh the witness' memory (if needed); to recall the matters from the witness's point of view rather than altering or influencing their recollection by showing them documents and leading their testimony. The witness statement should also not be used to introduce other documents to the case or to prove matters which can be proven by other written evidence. The witness should therefore only give evidence on what they can speak to personally.

All other evidence should be introduced by chronology or be contained in a bundle. The witness statement should not be used to provide a narrative for the documents – rather clarify any gaps which cannot be filled by the submitted documents.

An interview with a witness should be conducted using non-leading questions and (as it used to be a common practice of some practitioners) not by proposing content for approval or rejection by the witness. The interview should be recorded in as much detail as possible. The legal practitioner can draft the statement after the meeting, however, the statement should not differ from the statement provided by the witness during the interview.

The Appendix also advises that the witness statement should have as few amendments and drafts as possible, to conserve the originality of the witness' recollection.

Where the requirements of the Practice Direction and/or the Appendix are not followed, the Court has a wide range of sanctions to its disposal – from striking out the incorrectly prepared document to requiring the witness to give the evidence in chief, with corresponding cost consequences.

As this is currently a new rule, the implications for not following it are yet to be seen, however, it is advisable to plan, prepare for and produce a compliant witness statement rather than facing the consequence after.

If you have any questions regarding the information in this blog, please contact our specialist Business Solicitors by emailing online.enquiries@la-law.com